DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0243
Individual Income Tax
For the Years 1997, 1998, 1999, 2000, and 2001

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ISSUE

I. Individual Income Tax—Assessment

Authority: IC 6-8.1-5-1(b); IC 6-3-2-1(a); IC 6-3-4-1; IC 6-3-6-10;
IC 6-8.1-5-1(a); IC 6-8.1-4-2(a)(6).

Taxpayer protests the assessment of Indiana individual income tax.

STATEMENT OF FACTS

Taxpayer operates a business. The Department audited Taxpayer and found that he had not filed returns. Repeated attempts were made to obtain information from Taxpayer, but none was provided. An audit was completed using the best information available. Estimates were made by projecting income, based on Taxpayer's 1996 IT-40 and his 1996 and 1997 W-2s. Taxpayer's last IT-40 return was filed for 1996. Taxpayer protested the assessment and a hearing was held.

I. Individual Income Tax—Assessment

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). IC 6-3-2-1(a) imposes a tax each year on the adjusted gross income of every resident of Indiana. Each resident and taxpayer who has taxable Indiana income is required to file an Indiana income tax return. *See* IC 6-3-4-1. IC 6-3-6-10 requires taxpayers to keep and preserve records; these records are to be made available for inspection by the Department. If the Department reasonably believes that a person has not reported the proper amount of tax due, the Department is required to issue a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the Department. IC 6-8.1-5-1(a).

Taxpayer has been afforded ample opportunities to present coherent evidence to rebut the Department's assessment. The audit report notes that repeated attempts were made to obtain information, but none was provided. This indicates that Taxpayer chooses not to actively rebut the assessment. An auditor for the Department is granted the power to use projections and

estimates in lieu of actual figures, if such figures are not available for audit examination. *See* IC 6-8.1-4-2(a)(6).

The hearing officer for the Department has actively worked with Taxpayer in an attempt to encourage and permit Taxpayer to submit documentation to rebut the assessment. The hearing originally set for October 5, 2004 was rescheduled at Taxpayer's request so that he could have the opportunity to complete the tax forms for the years in question. At the hearing on December 7, 2004, Taxpayer submitted returns for 1997, 1998, and 1999. But Taxpayer did not submit returns for 2000 and 2001. The hearing officer set the date of December 29, 2004 for the submission of the returns for 2000 and 2001. This date was mutually agreed upon by the Department and Taxpayer. Taxpayer also was asked to submit transcripts of his federal returns so that the Department could verify the income claimed. The 2000 return was received but the 2001 return still is outstanding. No copies of the federal returns were submitted. The hearing officer repeatedly has attempted to contact Taxpayer in order to resolve this assessment, but the calls have gone unanswered. Having waited one month beyond the agreed deadline, the Department now chooses to pursue Taxpayer no more. Taxpayer actively has chosen not to avail himself of the opportunity to rebut the assessment. Based on the information in the case file and the incomplete returns and documentation provided by Taxpayer, the assessment is upheld.

I. <u>Individual Income Tax</u>—Assessment

<div align="center"><u>FINDING</u></div>

For the reasons named above, Taxpayer's protest is denied. The assessment is upheld.

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